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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MOP - 203664

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 6, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Pierce County Department of Human Services regarding Medical Assistance (MA), a hearing was held on December 15, 2021, by telephone.

The issue for determination is whether the agency correctly determined and seeks to recover an overpayment of medical assistance (MA) benefits in the amount of \$1,001.44 for the period from January 1, 2018 to April 30, 2018 (claim [REDACTED]).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Pierce County Department of Human Services  
412 West Kinne Street  
PO Box 670  
Ellsworth, WI 54011

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of St. Croix County.

2. On September 12, 2017, petitioner renewed MA benefits by telephone and the agency issued to him a summary of information he provided and instructed him to report incorrect information by September 22, 2017. It stated that he reported that no one in the household was employed or received income. Petitioner requested contact by email.
3. On September 13, 2017, the agency issued to petitioner an About Your Benefits notice informing him that his health care renewal was completed and that he was enrolled in BadgerCare Plus (BCP) with no monthly premium. It instructed him that if his household income exceeded \$1,005 per month, he must report it to the agency by the tenth day of the following month.
4. On September 10, 2017 petitioner began employment with [REDACTED] and on or about October 1, 2017 he began employment with [REDACTED].
5. On June 5, 2018, the agency discovered the potential overpayment through a SWICA wage match.
6. On May 28, 2020, the agency received pre-tax wage information for petitioner for the period from November 2017 to November 2018 from [REDACTED].
7. The agency received paystubs to document petitioner's wages for the period of time from October 1, 2017 to July 4, 2018, from [REDACTED], Inc.
8. On October 27, 2021, the agency issued to petitioner a manual overpayment notice, including an overpayment worksheet and Total Benefits Paid by Medicaid Report, informing him that he was overpaid BCP benefits in the amount of \$1,001.44 for the period from January 1, 2018 to April 30, 2018 as the result of member error for failure to report earned income.

### DISCUSSION

Medical assistance overpayment recovery is authorized by Wis. Stat., §49.497(1): (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following: 1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665. 2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits. 3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements. See also the agency's Badger Care Plus Handbook, §28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable. BadgerCare Plus Handbook, §28.3.

An overpayment is determined as follows: "Use the actual income that was reported or required to be reported in determining if an overpayment has occurred. The amount of recovery may not exceed the amount of the BadgerCare Plus benefits incorrectly provided. If the case was ineligible for BadgerCare Plus, recover the amount of fee-for-service claims paid by the state and any HMO capitation payments the state paid. Use ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s)." Handbook §28.4.2. As of April 1, 2014, all childless adults became eligible for BadgerCare Plus with an income limit equal to 100% of the Federal Poverty Level. See Wis. Stat., §49.45(23) for the law, and the Handbook, §50.1 for the limits.

Petitioner objected to the overpayment. He stated, first, that his failure to report income was not intentional. The agency does not allege that it was and I do not find that it was. He credibly explained that when he applied for BCP, the application forms were complex with a lot of fine print, and more difficult

than some of his graduate school examinations. He explained that when he did earn income and should have reported it, he was graduating and moving and simply overlooked the requirement to report income. He did contact the agency to close BCP a few months later, so his overpayment did not extend beyond April 2018. Finally, he explained that he did not use the BCP insurance and only incurred the monthly capitation fees, in excess of \$250 per month and believes that he should have been informed of that amount so that he knew what the potential overpayment would be to motivate him to cancel the benefit.

The agency sent the notice of BCP eligibility to petitioner's correct email address after he requested communication by email rather than mail. He does not deny receipt of the notice, which provided income reporting instructions.

It is not disputed that petitioner's earned income exceeded the program reporting limit in November 2017. It should have been reported in December 2017 and affected benefits in January 2018. Because petitioner did not report his income, he continued to be enrolled in BCP and capitation payments were made by the agency on his behalf to ensure that he had insurance coverage, which he was not eligible to receive. The agency is required to seek recovery of the amount of BadgerCare Plus benefits incorrectly provided and to recover the amount of fee-for-service claims paid by the state and any HMO capitation payments the state paid.

The agency has established by a preponderance of the evidence that petitioner received BCP benefits for from January 2018 to April 2018 that he was not eligible to receive. The agency documented the methods by which it calculated the overpayment. Petitioner did not dispute that it correctly determined the amount of benefit received. Petitioner is liable for overpayment. The agency correctly seeks to recover these benefits.

Petitioner's testimony was credible and his position elicits sympathy and understanding. In his circumstances, it was difficult for him to remember the income reporting requirements particularly since he did not use the benefit and was unaware of the amount paid on his behalf. It is understandable that petitioner would be unhappy about a significant overpayment when he did not actually file claims paid by the insurance, however, he did have coverage in the event he had needed to file a claim. That is how health insurance works. There is a cost and corresponding value for enrollment, even if no claims are paid. Regardless, nothing in the rules and regulations pertaining to the BCP program provide me the authority to forgive or excuse the overpayment for any reason he described. . It is the longstanding position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The agency correctly determined and is entitled to recover a BCP overpayment in the amount of \$1,001.44 for the period from January 1, 2018 to April 30, 2018 (claim [REDACTED]) as the result of member error for failure to report earned income.

**THEREFORE, it is**

**ORDERED**

That the petition for review is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

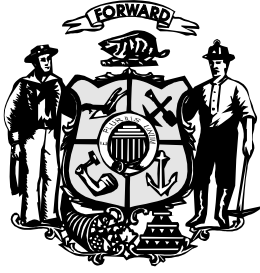
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 21st day of January, 2022

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Beth Whitaker  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
5<sup>th</sup> Floor North  
4822 Madison Yards Way  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 21, 2022.

Pierce County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability